

Proposed technical amendment:

**SECTION \_\_\_\_.** G.S. 143B-168.5 reads as rewritten:

**"§ 143B-168.5. Child Care – special unit.**

There is established within the Department of Health and Human Services, Division of Child Development and Early Education, a special unit to deal primarily with violations involving child abuse and neglect in child care arrangements. The Child Care Commission shall make rules for the investigation of reports of child abuse or neglect and for administrative action when child abuse or neglect is substantiated, pursuant to G.S. 110-88(6a), 110-105, ~~and 110-105.2.~~ 110-105.3, 110-105.4, 110-105.5, and 110-105.6."

(1985, c. 757, s. 156(r); 1991, c. 273, s. 12; 1997-443, s. 11A.118(a); 1997-506, s. 58.)

Explanation: Because G.S. 110-105.2 was repealed by 2015-123, s. 7, we should delete the reference to it. Instead, we should reference G.S. 110-105.3, 110-105.4, 110-105.5, and 110-105.6 as each of those references relates to how abuse and neglect cases are to be investigated by the Division of Child Development and Early Education.

Email conversation:

Thanks Tawanda.

I have reviewed both statutes as well and agree with this assessment. We do not need to repeal 143B-168.5, but we should delete the reference to 110-105.2 and substitute the Sections Tawanda references below (110-105.3, -105.4, -105.5 and -105.6) as each of those references relate to the how abuse and neglect cases are to be investigated by DCDEE.

Thank you,

Lisa

**From:** Tawanda Foster (Research)

**Sent:** Tuesday, October 06, 2015 11:23 AM

**To:** Bly Hall (Bill Drafting); Lisa Wilks (Bill Drafting)

**Subject:** RE: 2015-123 (SB 578)

Bly:

So sorry for the multiple emails. I went back through my file on SB 578 and the Division of Child Development and Early Education is under DHHS, so GS 143B-168.5 does not need to be repealed. It just needs to be modified. I'd recommend the following changes:

**§ 143B-168.5. Child Care – special unit.**

There is established within the Department of Health and Human Services, Division Child Development and Early Education a special unit to deal primarily with violations involving child abuse and neglect in child care arrangements. The Child Care Commission shall make rules for the investigation of reports of child abuse or neglect and for administrative action when child abuse or neglect is substantiated, pursuant to G.S. 110-88(6a), 110-105, ~~and 110-105.2~~ 110-105.3, 110-105.4, 110-105.5, and 110-105.6. (1985, c. 757, s. 156(r); 1991, c. 273, s. 12; 1997-443, s. 11A.118(a); 1997-506, s. 58.)

Ok, that's my final answer. ☺ Please let me know if you want to discuss this further or if there's anything else I can do to help.

All the best,

Tawanda

*Tawanda Foster*

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**From:** Bly Hall (Bill Drafting)

**Sent:** Monday, October 05, 2015 5:53 PM

**To:** Lisa Wilks (Bill Drafting); Tawanda Foster (Research)

**Subject:** 2015-123 (SB 578)

Lisa and Tawanda,

LexisNexis reports that there is a reference to 110-105.2 (repealed in 2015-123) that appears in G.S. 143B-168.5. Clearly, the reference needs to be updated (it looks to me like it should be to 110-105.6), unless G.S. 143B-168.5 should be repealed. Do you know which it should be?

Bly

Text of former G.S. 110-105.2:

**§ 110-105.2. Abuse and neglect violations.**

(a) For purposes of this Article, child abuse and neglect, as defined in G.S. 7B-101 and in G.S. 14-318.2 and G.S. 14-318.4, occurring in child care facilities, are violations of the licensure standards and of the licensure law. The Department, local departments of social services, and local law enforcement personnel shall cooperate with the medical community to ensure that reports of child abuse or neglect in child care facilities are properly investigated.

(b) When an investigation pursuant to G.S. 110-105(a)(3) substantiates that child abuse or neglect did occur in a child care facility, the Department may issue a written warning which shall specify any corrective action to be taken by the operator. The Department shall make an unannounced visit within one month after issuance of the written warning to determine whether the corrective action has occurred. If the corrective action has not occurred, then the Department may issue a special provisional license.

(c) When the Department issues a special provisional license pursuant to this section, the Department shall send a letter which states the reasons for the special provisional status, and the license shall specify corrective action that shall be taken by the operator. A special provisional license issued pursuant to this section shall be in effect for no more than six months from issuance. The operator shall post, where parents can see them, the letter stating the reasons for the special provisional status and the special provisional license. Under the terms of the special

provisional license, the Secretary may limit enrollment of new children until satisfied the abusive or neglectful situation no longer exists. The Department shall make unannounced visits as often as the Department believes it is necessary during the period the special provisional license is in effect.

(d) Specific corrective action required by a written warning, special provisional license, or any other administrative penalty authorized by this Article may include the permanent removal of the substantiated abuser or neglecter from child care.

(e) Nothing in this section shall restrict the Secretary from using any other statutory or administrative remedies available. (1985, c. 757, s. 156(w); 1987, c. 788, s. 19; 1997-506, s. 25; 1998-202, s. 13(x); 2003-407, s. 2.)

Text of G.S. 110-105.3, 110-105.4, 110-105.5, and 110-105.6:

**§ 110-105.3. Child maltreatment.**

(a) The purpose of this section is to assign the authority to investigate instances of child maltreatment in child care facilities to the Department of Health and Human Services, Division of Child Development and Early Education. The General Assembly recognizes that the ability to properly investigate child maltreatment in licensed child care facilities is dependent upon the cooperation of State and local law enforcement agencies, as well as county departments of social services.

(b) The following definitions shall apply in this Article:

- (1) Caregiver. – The operator of a licensed child care facility or religious-sponsored child care facility, a child care provider, as defined in G.S. 110-90.2(a)(2), a volunteer, or any person who has the approval of the provider to assume responsibility for children under the care of the provider.
- (2) Child care facilities. – Any of the following:
  - a. All facilities required to be licensed under this Article.
  - b. All religious-sponsored facilities operating pursuant to G.S. 110-106.
  - c. All locations where children are being cared for by someone other than their parent or legal guardian that require a license under this Article but have not been issued a license by the Department.
- (3) Child maltreatment. – Any act or series of acts of commission or omission by a caregiver that results in harm, potential for harm, or threat of harm to a child. Acts of commission include, but are not limited to, physical, sexual, and psychological abuse. Acts of omission include, but are not limited to, failure to provide for the physical, emotional, or medical well-being of a child, and failure to properly supervise children, which results in exposure to potentially harmful environments.

(c) The Department, local departments of social services, and local law enforcement personnel shall cooperate with the medical community to ensure that reports of child maltreatment in child care facilities are properly investigated.

(d) When a report of child maltreatment is received, the Department shall make a prompt and thorough assessment to ascertain the facts of the case, the extent of the maltreatment, and the risk of harm to children enrolled at the child care facility. When the report alleges maltreatment meeting the definition of abuse or neglect as defined in G.S. 14-318.2 and G.S. 14-318.4, the Department shall contact local law enforcement officials to investigate the report.

(e) During the pendency of an investigation, the Department may issue a protection plan restricting an individual alleged to have maltreated a child from being on the premises of the facility while children are in care. The Department may also suspend activities at a facility under investigation, including, but not limited to, transportation, aquatic activities, and field trips.

(f) At any time during the pendency of a child maltreatment investigation, the Department may order immediate corrective action as required to protect the health, safety, or welfare of children in care. If the corrective action does not occur within the period specified in the corrective action order, the Department may take administrative action to protect the health, safety, or welfare of the children at the child care facility.

(g) The Department may, in accordance with G.S. 150B-3(c), summarily suspend the license of a child care facility if the Department determines that emergency action is required to protect the health, safety, or welfare of the children in a child care facility regulated by the Department.

(h) In the event the Department determines child maltreatment did not occur in a child care facility, nothing in this section shall prevent the Department from citing a violation or issuing an administrative action based upon violations of child care licensure law or rules based upon its investigation. Citations of violations or administrative actions issued pursuant to this subsection shall not be confidential.

(i) During the pendency of an investigation, all matters regarding the investigation, including, but not limited to, any complaint, allegation, or documentation regarding inspections or the identity of the reporter, shall be held in strictest confidence as provided by subsection (j) of this section. Following a determination that maltreatment has occurred, the investigation findings shall be made public, as well as the date of any visits made pursuant to the investigation, and any corrective action taken, if applicable. DCDEE shall not post on its Internet Web site that a maltreatment investigation occurred if the allegation of maltreatment was unsubstantiated.

(j) Regardless of the Department's final determination regarding child maltreatment, all information received by the Department during the course of its investigation shall be held in the strictest confidence by the Department, except for the following:

- (1) The Department shall disclose confidential information, other than the identity of the reporter, to any federal, State, or local government entity or its agent in order to protect a juvenile from child maltreatment, abuse, or neglect. Any confidential information disclosed to any federal, State, or local government entity or its agent pursuant to this subdivision shall remain confidential with the other government entity or its agent and shall only be redisclosed for purposes directly connected with carrying out that entity's mandated responsibilities.
- (2) The Department shall only disclose information identifying the reporter pursuant to a court order, except that the Department may disclose information identifying the reporter without a court order only to a federal, State, or local government entity that demonstrates a need for the reporter's name to carry out the entity's mandated responsibilities.
- (3) A district court, superior court, or administrative law judge of this State presiding over a civil matter in which the Department is not a party may order the Department to release confidential information. The court may order the release of confidential information after providing the Department with reasonable notice and an opportunity to be heard and then determining that the

information is relevant, necessary to the trial of the matter before the court, and unavailable from any other source.

(k) When a report of child maltreatment alleges facts that indicate that a report is required under G.S. 7B-301, the Department shall contact the local department of social services in the county where the juvenile resides or is found and make the necessary report.

(l) In performing any duties related to the assessment of a report of child maltreatment, the Department may consult with any public or private agencies or individuals, including the available State or local law enforcement officers, probation and parole officers, and the director of any county department of social services who shall assist in the assessment and evaluation of the seriousness of any report of child maltreatment when requested by the Department. The Department or the Department's representatives may make a written demand for any information or reports, whether or not confidential, that may in the Department's opinion be relevant to the assessment of the report. Upon the Department or the Department's representative's request and unless protected by attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and the records required by this subsection, to the extent permitted by federal law and regulations.

(m) The North Carolina Child Care Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section. Rules promulgated subject to this section shall be exempt from the provisions of G.S. 150B-19.1(e) and (f). (2015-123, s. 8.)

#### **§ 110-105.4. Duty to report child maltreatment.**

(a) Any person who has cause to suspect that a child in a child care facility has been maltreated, as defined by G.S. 110-105.3, or has died as the result of maltreatment occurring in a child care facility, shall report the case of that child to the Department. The report may be made orally, by telephone, or in writing. The report shall include information as is known to the person making the report, including (i) the name and address of the child care facility where the child was allegedly maltreated, (ii) the name and address of the child's parent, guardian, or caretaker, (iii) the age of the child, (iv) the present whereabouts of the child if not at the home address, (v) the nature and extent of any injury or condition resulting from maltreatment, and (vi) any other information the person making the report believes might assist in the investigation of the report. If the report is made orally or by telephone, the person making the report shall give the person's name, address, and telephone number. Refusal of the person making the report to give a name shall not preclude the Department's assessment of the alleged maltreatment.

(b) Upon receipt of any report of maltreatment involving sexual abuse of the child in a child care facility, the Department shall notify the State Bureau of Investigation within 24 hours or on the next workday. If sexual abuse in a child care facility is not alleged in the initial report, but during the course of the assessment there is reason to suspect that sexual abuse has occurred, the Department shall immediately notify the State Bureau of Investigation. Upon notification that sexual abuse may have occurred in a child care facility, the State Bureau of Investigation may form a task force to investigate the report. (2015-123, s. 8.)

#### **§ 110-105.5. Child maltreatment registry.**

(a) The Department shall establish and maintain a registry containing the names of all caregivers who have been confirmed by the Department of having maltreated a child pursuant to G.S. 110-105.3.

(b) Individuals who wish to contest findings under subsection (a) of this section are entitled to an administrative hearing as provided by the Administrative Procedure Act under Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days of the mailing of the written notice of the Department's intent to place its findings about the person in the Child Maltreatment Registry.

(c) Individuals whose names are listed on the Registry shall not be a caregiver as defined in G.S. 110-105.3(b)(1) at any licensed child care facility or religious-sponsored child care facility.

(d) No person shall be liable for providing any information for the Child Maltreatment Registry if the information is provided in good faith. Neither an employer, potential employer, nor the Department shall be liable for using any information from the Child Maltreatment Registry if the information is used in good faith for the purpose of screening prospective applicants for employment or reviewing the employment status of an employee. The immunity established by this subsection does not extend to malicious conduct or intentional wrongdoing.

(e) Upon request, a child care facility, as defined in G.S. 110-105.3, is permitted to provide confidential or other identifying information to the Department, including social security numbers, taxpayer identification numbers, parent's legal surname prior to marriage, and dates of birth, for the purpose of verifying the identity of the accused caregiver.

(f) With the exception of the names of individuals listed on the Child Maltreatment Registry, all other information received by or pertaining to the Child Maltreatment Registry shall be confidential and is not a public record under Chapter 132 of the General Statutes.

(g) In order to determine an individual's fitness to care for or adopt a child, information from the Child Maltreatment Registry may be used by any of the Department's divisions responsible for licensing homes or facilities that care for children, and the Department may provide information from this list to child-caring institutions, child-placing agencies, group home facilities, and other providers of foster care, child care, or adoption services.

(h) The North Carolina Child Care Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section. (2015-123, s. 8; 2015-264, s. 56(a).)

#### **§ 110-105.6. Penalties for child maltreatment.**

(a) For purposes of this Article, child maltreatment occurring in child care facilities is a violation of this Article, licensure standards, and licensure laws.

(b) Pursuant to G.S. 110-105.3, when an investigation confirms that child maltreatment did occur in a child care facility, the Department may issue an administrative action up to and including summary suspension and revocation of the facility's child care license.

(c) If the facility is permitted to remain open after an administrative action has been issued, the administrative action shall specify any corrective action to be taken by the operator.

(d) The Department shall make unannounced visits to determine whether the corrective action has occurred. If the corrective action has not occurred, then the Department may take further action against the facility as necessary to protect the health, safety, or welfare of the children at the child care facility.

(e) Administrative actions issued shall include a statement of the reasons for the action and shall specify corrective action that shall be taken by the operator.

(f) Under the terms of the administrative action, the Department may limit enrollment of new children until satisfied the situation giving rise to the confirmation of child maltreatment no longer exists.

(g) Specific corrective action required by an administrative action authorized by this Article may include the removal of the individual responsible for child maltreatment from child care pending a final determination or appeal of the individual's placement on the Child Maltreatment Registry.

(h) Nothing in this section shall restrict the Department from using any other statutory or administrative remedies available. (2015-123, s. 8.)